



3/5/18

# New York City Department of Environmental Protection

## FY19 Regulatory Agenda

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In compliance with section 1042 of the New York City Charter, the following is the regulatory agenda for rules that the New York City Department of Environment of Protection (DEP) anticipates it may promulgate during the fiscal year beginning July 1, 2018 and ending June 30, 2019. An approximate schedule for adopting the proposed rules and the name and telephone number of a DEP official knowledgeable about each subject area involved are listed below each section.

### 1. **Construction Noise Mitigation Rules**

#### A. Description

Rules regarding noise mitigation practices including requirements for street plates, jackhammers, and noise barriers.

#### B. Reasons

Update 2005 rules that set forth specific requirements for “construction noise mitigation plans” that contractors must complete prior to starting work.

#### C. Anticipated contents

The rule will establish additional requirements for the use of insulation between street plates and the ground, additional noise barriers for structures over 20 feet, and additional technologies for mitigation of jackhammer noise during nighttime construction activities.

#### D. Objectives

To further reduce noise during construction activities.



E. Legal basis:

NYC Charter Section 1403

F. Relevant local laws and rules:

NYC Administrative Code §24-219, 15 RCNY §28-100 et seq., 34 RCNY §2-11

G. Individuals and entities affected:

Builders and Contractors

H. Approximate Schedule:

4Q FY 2019

I. Agency Contact:

Russ Pecunies, DEP Legal Affairs, (718) 595-6531

2. **Compliance with Local Law 53/18**

A. Descriptions

Rules will define timeframes for noise inspections; will establish procedures for stop-work orders and amend the adjudication process to cover hearings on stop-work orders issued. The department will amend existing construction rules to define “interior renovations.”

B. Reasons

Local Law 53 of 2018 revised the Noise Code to require rapid responses to complaints regarding construction noise and music from commercial establishments. The same legislation allows inspectors to stop work with respect to the equipment that is in violation of the decibel levels set and poses a threat to human health and safety. Finally, the same legislation requires a definition of what constitutes interior work.

C. Anticipated contents

The rules will establish requirements to help ensure that after-hours noise complaints are responded to during a time that the noise is most likely to occur and when the noise is likely to be repeated. The stop work rule will establish a procedure for requesting a hearing to appeal a



written abatement order. The department will amend the construction noise rules to define what constitutes interior renovations and the mitigation procedures to be used to reduce the noise levels during this construction activity.

D. Objectives

To further reduce noise during construction activities.

E. Legal basis:

NYC Charter Section 1403

F. Relevant local laws and rules:

NYC Administrative Code §24-207, 24-219, 24-223.1, 15 RCNY §28-100 et seq.

G. Individuals and entities affected:

Builders and Contractors

H. Approximate Schedule:

1Q FY 2019

I. Agency Contact:

Russ Pecunies, DEP Legal Affairs, (718) 595-6531

**3. Mold**

A. Description

Rule to define the emergency condition that would allow a contractor to file the post remediation notice to the department within 24 hours after the commencement of the abatement has begun.

B. Reasons

Local Law 61 of 2018 established minimum standards for carrying out mold assessment, mold abatement and mold remediation at certain buildings and requires the department to promulgate this rule.

C. Anticipated contents



The rule would set forth the conditions that pose an immediate risk of harm to any person or damage to property and would necessitate a filing 24 hours after the commencement of the abatement.

D. Objectives

Comply with Local Law 61 mandate by developing standards that would define when notices have to be filed within 24 hours.

E. Provide a summary of the legal basis for the proposed rule.

NYC Charter Section 1403

F. Relevant local laws and rules:

Local Law 61 of 2018; NYC Administrative Code section 24-154

G. Individuals and entities affected:

Contractors, Building Owners

H. Approximate Schedule:

3Q FY 2019

I. Agency Contact:

Russ Pecunies, DEP Legal Affairs, (718) 595-6531

**4. Registration of Cook Stoves and Charcoal Burning Devices**

A. Description

Rule to require registration under the Air Code for cook stoves and charcoal burning devices that require the installation of an emission control device.

B. Reasons

The 2016 Air Code revision did not contain an explicit requirement to file a registration for cook stoves with the department as was required for char broilers. Requiring registration of these



devices allows for better tracking and requirements for control systems before the 2020 effective date for installing emission controls on existing cook stoves.

C. Anticipated contents

The rule will create a registration requirement that all cook stoves and charcoal burning devices must be registered with the department.

D. Objectives

Reduction in emissions.

E. Provide a summary of the legal basis for the proposed rule.

NYC Charter Section 1403, Ad Code 24-109

F. Relevant local laws and rules:

NYC Administrative Code Section 24-109(a)(17)

G. Individuals and entities affected:

Restaurants, other food preparation facilities

H. Approximate Schedule:

2Q FY 2019

I. Agency Contact:

Russ Pecunies, DEP Legal Affairs, (718) 595-6531

5. **Work Permit Exceptions**

A. Description

Rule will define certain equipment that the department may exempt from requirements for a work permit under the Air Pollution Control Code.

B. Reasons



Certain equipment, which is not explicitly exempted from the work permit requirement in section 24-121 of the Air Code, does not need a work permit for various reasons including how DEC classifies certain sources. DEP seeks to clarify and expand the existing list of sources for which a registration or exemption from filing is acceptable instead of a work permit.

C. Anticipated contents

The rule will set forth the equipment or apparatus that the department may exempt from requirements for a work permit.

D. Objectives

Simplify compliance requirements and streamline permitting.

E. Legal basis:

NYC Charter Section 1403

F. Relevant local laws and rules:

NYC Administrative Code Section 24-121(a)(21)

G. Individuals and entities affected:

Engineers, architects, and those who file in the regulated community.

H. Approximate Schedule:

2Q FY 2019

I. Agency Contact:

Russ Pecunies, DEP Legal Affairs, (718) 595-6531

**6. Fee Rule Amendment**

A. Description

Rule will establish a fee for variances from the Air Pollution Control Code.

B. Reasons



The department receives requests for variances from the Air Code, which require a review by engineers and other staff. The department needs a fee to cover its costs for reviewing these applications.

C. Anticipated contents

The rule will establish a fee for review of applications for a variance from the Air Code.

D. Objectives

Ensure sufficient revenue is received to review and evaluate variances.

E. Legal basis:

NYC Charter Section 1403

F. Relevant local laws and rules:

NYC Administrative Code Section 24-105 (c)

G. Individuals and entities affected:

Those who seek a variance from the Air Code.

H. Approximate Schedule:

3Q FY 2019

I. Agency Contact:

Russ Pecunies, DEP Legal Affairs, (718) 595-6531

**7. Penalty Schedule Amendments**

A. Description

Rules that will amend the penalty schedule for the Air Code, Noise Code, Asbestos Rules, and Community Right-to-Know Law.

B. Reasons



Recent or pending changes will require the amendment of penalty schedules related to summonses issued by DEP.

C. Anticipated contents

Addition and deletion of affected provisions from current penalty schedules.

D. Objectives

Update penalty schedules to be consistent with current laws and rules.

E. Provide a summary of the legal basis for the proposed rule.

NYC Charter Section 1403

F. Relevant local laws and rules:

NYC Administrative Code § 24-223, 24-223.1(d), 24-154, 24-178, 24-105, 24-204, 24-257, 15 RCNY Chapter 1.

G. Individual and entities affected:

Entities and individuals who receive summonses issued by DEP.

H. Approximate Schedule:

1Q FY 2019

I. Agency Contact:

Russ Pecunies, DEP Legal Affairs, (718) 595-6531

## **8. Drilling and Excavation**

A. Description

Uniform standards for the application for and permitting of all drilling and/or excavation in close proximity to critical infrastructure.

B. Reason





Existing provisions of the Administrative Code mandate in general terms that the DEP Commissioner protect New York City's water supply; this rule would provide explicit protections.

C. Anticipated contents

The rule will set forth specific standards for the application for and permitting of drilling and/or excavation in close proximity to critical infrastructure

D. Objectives

To guarantee and protect the integrity of New York City's water supply and facilities.

E. Provide a summary of the legal basis for the proposed rule.

NYC Charter Section 1403

F. Relevant local laws and rules:

NYC Administrative Code §24-302; 15 RCNY Chapter 34

G. Individuals and entities affected:

Engineers and contractors whose projects include drilling and/or excavation within the five boroughs of NYC

H. Approximate Schedule:

4Q FY 2019

I. Agency Contact:

Melinda Sherer, DEP Legal Affairs, (718) 595-6613

## 9. Water Shortage Rules

A. Description

Amendment of existing rules to apply in all situations of water shortage (including drought situations) and to update the existing prohibitions.

B. Reasons



Update the existing prohibitions to reflect current conservation studies and understanding of water use by consumers.

C. Anticipated contents

The rule will set forth prohibitions and restrictions on water usage during periods of water shortage.

D. Objectives

Ensure an adequate water supply during periods of weather-related drought and/or large conveyance infrastructure repair and/or failure.

E. Provide a summary of the legal basis for the proposed rule.

NYC Charter Section 1403

F. Relevant local laws and rules:

15 RCNY Chapter 21

G. Individuals and entities affected:

All consumers of New York City water

H. Approximate Schedule:

4Q FY 2019

I. Agency Contact:

Robin Levine, DEP Legal Affairs (718) 595-6586

## **10. Design and Construction of Private Water Mains**

A. Description

Rules for design and construction of private water mains.

B. Reasons

Establish rules for private water mains that are consistent with rules for private sewers.



C. Anticipated contents

The rules will establish requirements for those who construct private water mains in mapped streets at their own expense (and connect such water mains to City water mains or other private water mains) to transfer ownership of such mains to the City within a prescribed period of time.

D. Objectives

To ensure that private water mains are constructed to DEP standards and specifications.

E. Provide a summary of the legal basis for the proposed rule.

NYC Charter Section 1403

F. Relevant local laws and rules:

15 RCNY Chapter 23

G. Individuals and entities affected:

Builders and developers

H. Approximate Schedule:

4Q FY 2019

I. Agency Contact:

Susan Gordon, DEP Legal Affairs (718) 595-4260

## **11. Watershed - Revocable Land Use Permits**

A. Description

Rules for issuance of revocable land use permits for NYC-owned land in nine upstate counties

B. Reasons

Give DEP greater discretion to allow acceptable activities on City-owned land without imposition of unduly burdensome insurance requirements.



C. Anticipated contents

The rule will remove the requirement for a bond for pump stations and add a new fee category for “lawn mowing or other small-scale uses incidental to residential dwellings.”

D. Objectives

Permit public use of land in the NYC watershed in upstate counties.

E. Provide a summary of the legal basis for the proposed rule.

NYC Charter Section 1403

F. Relevant local laws and rules:

15 RCNY Chapter 17

G. Individuals and entities affected:

Applicants for revocable land use permits for NYC-owned land in nine upstate counties

H. Approximate Schedule:

4Q FY 2019

I. Agency Contact:

May Chin, DEP Legal Affairs (845) 340-7204

**12. Watershed – Rules for the Recreational Use of Water Supply Lands and Waters**

A. Description

Rules for issuance of permits and permissions for certain commercial activities and additional uses on water supply property owned by the City of New York.

B. Reasons

Emphasize new recreational uses and further align property designations with beneficial use principles.



C. Anticipated contents

The rule will provide for permitting for new recreational uses such as trolling motors and for new Public Access Areas for East of Hudson water supply lands.

D. Objectives

To provide management strategies to manage/protect natural resources.

E. Provide a summary of the legal basis for the proposed rule.

NYC Charter Section 1403

F. Relevant local laws and rules:

15 RCNY Chapter 16

G. Individuals and entities affected:

Public interested in recreational use of water supply lands and waters

H. Approximate Schedule:

4Q FY 2019

I. Agency Contact:

Robin Levine, DEP Legal Affairs (718) 595-6586

### **13. Watershed – Watershed Regulations**

A. Description

Update of certain wastewater sections of the *Rules and Regulations for the Protection from Contamination, Degradation and Pollution of the New York City Water Supply and Its Sources* (Watershed Regulations).

B. Reasons

To conform to regulatory revisions made by the New York State Department of Environmental Conservation (DEC) and the New York State Department of Health.



C. Anticipated contents

The rule will amend requirements governing certain regulated activities in the New York City watershed including noncomplying regulated activities, subsurface treatment systems, holding tanks, stormwater pollution prevention plans, sewer systems, and variances.

D. Objectives

Protection of NYC water supply from contamination and pollution.

E. Provide a summary of the legal basis for the proposed rule.

NYC Charter Section 1403

F. Relevant state/local laws and rules:

15 NYCRR Chapter 18; Design Standards for Intermediate-Sized Wastewater Treatment Systems (effective March 5, 2014), and the New York State Department of Health Appendix 75-A revisions (effective February 2, 2010).

G. Individuals and entities affected:

Persons undertaking regulated activities in the New York City Watershed

H. Approximate Schedule:

4Q FY 2019

I. Agency Contact:

Robin Levine, DEP Legal Affairs (718) 595-6586

## **14. Community Right-to-Know Rules**

A. Description

Update and revision of the Community Right-To-Know Regulations for entities involved in the processing, storage, handling, or use of hazardous substances, extremely hazardous substances, and regulated toxic substances.

B. Reasons



DEP promulgated these rules almost 25 years ago, and they contain many outdated and obsolete references.

C. Anticipated contents

Revisions to the Hazardous Substances List to conform to the current federal and state lists

D. Objectives

To protect the public from the dangers associated with hazardous substances.

E. Provide a summary of the legal basis for the proposed rule.

NYC Charter Section 1403

F. Relevant local laws and rules:

15 RCNY Chapter 41, §§ 24-703 and 24-706 of the New York City Administrative Code

G. Individuals and entities affected:

Owners of facilities where hazardous substances are stored.

H. Approximate Schedule:

4Q FY 2019

I. Agency Contact:

Russ Pecunies, DEP Legal Affairs, (718) 595-6531

## **15. Sewer Use Rules**

A. Description

Revisions to “Use of the Public Sewers” rules, incorporating federal pretreatment standards and requirements, establishing sewer use limits and implementing the federal pretreatment program.

B. Reasons



Provide more clarity and specificity to the regulations in order to avoid confusion, promote higher rates of compliance, and facilitate DEP inspectors' performance of comprehensive inspections.

C. Anticipated contents

Modifications to the definition section, the Best Management Practices for Non-Residential Direct and Indirect Dischargers of Grease to the Public Sewer System, and the rules regarding groundwater discharge permits.

D. Objectives

Reduce pollutants in stormwater runoff that discharge to the local waterbodies.

E. Provide a summary of the legal basis for the proposed rule.

Section 1403 of NYC Charter and section 24-523(e) of the NYC Administrative Code

F. Relevant local laws and rules:

15 RCNY Chapter 19

G. Individuals and entities affected:

Dischargers to the public sewer system.

H. Approximate Schedule:

4Q FY 2019

I. Agency Contact:

Russ Pecunies, DEP Legal Affairs, (718) 595-6531

**16. MS4**

A. Description

Rules that will give DEP new or additional authority to regulate certain sources of pollution in order to protect water quality and meet the City's obligations under the MS4 permit.

B. Reasons





New York State Pollutant Discharge Elimination System Permit for the NYC Municipal Separate Storm Sewer System (MS4), effective date August 1, 2015, requires DEP to have legal authority to regulate sources of pollution to the MS4.

C. Anticipated contents

Addition of rules related to regulation of industrial/commercial dischargers and dischargers from construction and post-construction sites to the MS4.

D. Objectives

To comply with NYC's MS4 permit and regulate discharges to the NYC MS4 in order to reduce the discharge of pollutants to the NYC waterways.

E. Provide a summary of the legal basis for the proposed rule.

Section 1403 of NYC Charter, Chapter 5 of Title 24 of the NYC Administrative Code

F. Relevant local laws and rules:

Chapter 5 of Title 24 of the NYC Administrative Code

G. Individuals and entities affected:

Property owners, business owners, contractors and the public.

H. Approximate Schedule:

4Q FY 2019 (Industrial/Commercial Rules); 4Q FY 2019 (Construction/Post-Construction Rules)

I. Agency Contact:

Melinda Sherer, DEP Legal Affairs (718) 595-6613

**17. Revision of Facility Inventory Form**

A. Description

Repeat and replace the existing Facility Inventory Form (FIF) in the Community Right-to-Know Program Rules.



B. Reasons

The current FIF requires updating due to new federal, state, and local requirements.

C. Anticipated contents

The current FIF will be replaced by an updated version.

D. Objectives

Bring the FIF into compliance with all current requirements.

E. Provide a summary of the legal basis for the proposed rule.

Section 1403 of NYC Charter and section 24-705 of the Administrative Code

F. Relevant local laws and rules:

Community Right-to-Know Law (Section 24-705)

G. Individuals and entities affected:

Facilities that store hazardous materials.

H. Approximate Schedule:

1Q FY 2019

I. Agency Contact:

Russ Pecunies, DEP Legal Affairs, (718) 595-6531

**Update to Perchloroethylene Dry Cleaning Facilities**

A. Rules applicable to all dry cleaning facilities in the state that use perchloroethylene (perc) will be amended to reflect changes by the DEC to 6 NYCRR Parts 200 and 232.

B. Reasons

DEC has adopted changes to the regulations that impact the dry cleaning community. Major changes to the dry cleaning industry have taken place since DEC's dry cleaning regulations went



into effect in 1997. As a result, many of the requirements in Part 232 have become outdated and are, therefore, in need of revision.

C. Anticipated Contents

Revise the existing regulation and add several new components to improve compliance and program delivery; reduce perc and alternative solvent emissions to the environment; address advancements in technology and changes in the industry regarding the use of alternative dry cleaning solvents; and bring New York's regulation up to date with current federal requirements. This proposal applies to any entity that operates, or proposes to operate, approved alternate solvent or perc dry cleaning machines.

D. Objectives

Reduce exposure to perc from dry cleaning operations and improve air quality.

E. Legal Basis

NYC Charter Section 1403

F. NYC Administrative Code Section 24-105, 15 RCNY 12-01 et seq.

G. Individuals and Entities affected:

Dry Cleaning Facilities

H. Approximate Schedule:

2Q FY 2019

I. Agency Contact:

Russ Pecunies, DEP Legal Affairs, (718)595-6531